

UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Ralf Grobleben et al
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Title: SHELF BASE FOR A REFRIGERATOR

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REPLY BRIEF

Pursuant to 37 CFR 41.41, Appellants hereby file a reply brief in response to the Examiner's Answer dated November 16, 2009, in the above-identified application, within the 2-month reply deadline.

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(1) REAL PARTY IN INTEREST

The real party in interest is BSH Bosch und Siemens Hausgeräte GmbH.

(2) RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) STATUS OF CLAIMS

Claims 15, 18-20, and 22-37 are pending in the present application. Claims 1-14, 16, 17, and 21 were canceled. Claims 15 and 30 are independent.

Claims 20 and 28 would be allowable if rewritten in independent form, and claims 36 and 37 would be allowable if rewritten in independent form and to overcome the rejections under 35 U.S.C. § 112, second paragraph.

The Advisory Action dated April 23, 2009, stated that the Amendment filed on April 13, 2009, has overcome the rejection under 35 U.S.C. § 112, second paragraph, involving the rail securement. However, the Advisory Action dated April 23, 2009, also stated that the Amendment filed on April 13, 2009, will not be entered. Therefore, the rejection of claims 30-37 under 35 U.S.C. § 112, second paragraph, is included in this Appeal Brief. The Examiner's Answer dated November 16, 2009, stated that the rejection concerning the rail securement is being considered moot.

The final rejections of claims 15, 18, 19, 22-27, and 29-37 are being appealed.

(4) STATUS OF AMENDMENTS

The Advisory Action dated April 23, 2009, declined to enter the Amendment filed on April 13, 2009, which included amendments to claim 30. Therefore, the claims in the

attached Claims Appendix correspond to the Amendment filed on October 10, 2008, which were entered by the final Office Action dated December 11, 2008.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

Conventional shelf bases may provide retaining rails located on the underside of the shelf base such that containers can be suspended from the shelf base, thereby efficiently using the volume of a compartment under the shelf. (Page 1, lines 3-16)

In stark contrast, an exemplary embodiment of the claimed invention, as recited by, for example, independent claim 15, is directed to a shelf base (6) for a refrigerator, comprising

a plate (9) (page 3, lines 27-29);

lower retaining rails (12) extending along a lower side of the plate (9) for attachment for a support for holding chilled goods (page 3, lines 29-34); and

upper retaining rails (11) for another support (13, 31) extend along the upper side of the plate (9) (page 3, lines 29-34).

In this manner, the present invention can provide a support for chilled goods to be attached to the upper side of the shelf plate, as well as the lower side of the shelf plate, thereby improving the diversity of possibilities for utilizing the space of such a shelf base.

Claim 18 depends from claim 15 and is directed to said upper retaining rails (11) are connected at least at one of their ends to respectively one end of one of said lower retaining rails (12) (page 3, lines 29-34).

Claim 19 depends from claim 15 and is directed to front ends of respectively one of said upper (11) and one of said lower (12) retaining rails are connected by a guide profile (10) which spans the front edge of said plate (9) and is displaceable along said front edge (page 3, lines 30-34; page 4, lines 7-8).

Claim 22 depends from claim 18 and is directed to including at least one of said lower (12) and said upper (11) retaining rails are open at their rear ends (Figures 2-4; page 3, lines 30-34).

Claim 23 depends from claim 29 and is directed to including an upwardly projecting projection (20) formed at the front end of a bearing surface of at least one of said lower rails (12) (page 4, lines 16-21).

Claim 24 depends from claim 18 and is directed to one of a shell (36) or a bottle holder (15) is mounted in said lower retaining rails (12) as a support (page 4, lines 3-5 and 16-21; page 5, lines 10-17; page 6, lines 12-14).

Claim 25 depends from claim 18 and is directed to a support (13) for drinks cans (14) mounted in said upper retaining rails (11) (page 4, lines 1-14 and 35-36; page 5, lines 1-8).

Claim 26 depends from claim 25 and is directed to said support (13) for drinks cans (14) includes a base plate (23) substantially parallel to said plate (9) and includes ribs (24) provided with indentations projecting from said base plate (23) (page 4, lines 11-14 and 35-36; page 5, lines 1-8).

Claim 27 depends from claim 15 and is directed to an egg holder (31) mounted in one of said upper (12) or lower (11) retaining rails (page 6, lines 6-10).

Claim 29 depends from claim 18 and is directed to rear ends of respectively one of said upper (12) and one of said lower (11) retaining rails span the rear edge of said plate (9) and are displaceably connected along said rear edge (page 4, lines 23-33).

Another exemplary embodiment of the claimed invention, as recited by, for example, independent claim 30 is directed to a shelf base for movable attachment thereto of a first support (13) and a second support (15) of a refrigerator each of which is capable of supporting chilled goods, the shelf base for movable attachment thereto of the first support (13) and the second support (15) of the refrigerator such that the first (13) and second (15) supports of the refrigerator can each move in extension and retraction directions (page 4, lines 1-21 and 35-36; page 5, lines 1-17), said shelf base comprising:

- a plate (23) having a front edge, a rear edge, a lower side, and an upper side (page 4, lines 35-36; page 5, lines 1-3);

- lower retaining rails (12) having a front end and a back end, said lower retaining rails (12) extending at least between said front edge of said plate (9) and said rear edge of said plate (9) along said lower side of said plate (9) and said lower

retaining rails (12) for movable attachment thereto of the first support (13) that holds chilled goods such that the first support (13) can be extended relative to said lower retaining rails (12) from an inward location into an outward location and can be retracted relative to said lower retaining rails (12) from said outward location into said inward location (page 3, lines 29-34; page 4, lines 7-8, 11-14, and 35-36; page 5, lines 1-8); and

upper retaining rails (11) having a front end and a back end, said upper retaining rails (11) extending at least between said front edge of said plate (9) and said rear edge of said plate (9) along said upper side of said plate (9) and said upper retaining rails (11) for attachment of the second support (15) that holds chilled goods such that the second support (15) can be extended relative to said upper retaining rails (11) from an inward location into an outward location and can be retracted relative to said upper retaining rails (11) from said outward location into said inward location (page 4, lines 1-5 and 16-21; page 5, lines 10-17),

said front end of said upper retaining rails (11) and said front end of said lower retaining rails (12) being secured to one another across at least one of said front edge of said plate (9) and said rear edge of said plate (9) such that said upper retaining rails (11) and said lower retaining rails (12) are secured against movement relative to said plate (9) in said extension and retraction directions of the first support (13) and the second support (15) (page 4, lines 1-5 and 16-21; page 5, lines 10-17), and

said upper retaining rails (11) and said lower retaining rails (12) are not secured to one another along said extents thereof between said front edge of said plate (9) and said rear edge of said plate (9) (page 3, lines 33-34).

As explained above, these features of the present invention can provide a support for chilled goods to be attached to the upper side of the shelf plate, as well as the lower side of the shelf plate, thereby improving the diversity of possibilities for utilizing the space of such a shelf base.

Claim 31 depends from claim 30 and is directed to said upper retaining rails (11) and said lower retaining rails (12) are secured to one another so as to be movable in a direction

perpendicular to said extension and retraction directions of said first support (13) and said second support (15) (page 4, lines 1-5 and 16-21; page 5, lines 10-17).

Claim 32 depends from claim 30 and is directed to said plate (9) has a solid extent with no apertures at least in said portion thereof along which said upper retaining rails (11) and said lower retaining rails (12) extend (Figures 2-4; page 3, lines 27-34).

Claim 33 depends from claim 32 and is directed to said plate (9) is formed of glass (Figures 2-4; page 3, lines 27-34).

Claim 34 depends from claim 30 and is directed to said back end of said upper retaining rails (11) and said back end of said lower retaining rails (12) are secured to one another across said rear edge of said plate (9) (Figures 2-4; page 3, lines 27-34).

Claim 35 depends from claim 30 and is directed to the front ends of said upper (11) and lower (12) retaining rails are connected by a guide profile (10) that spans the front edge of said plate (9) and is displaceable along the front edge of the plate (9) (Figures 2-4; page 3, lines 27-34; page 4, lines 7-21).

Claim 36 depends from claim 30 and is directed to the back end of respectively one of said upper (11) and one of said lower (12) retaining rails spans said rear edge of said plate (9) and said back end of said upper retaining rail (11) is displaceably connected to said back end of said lower retaining rails (12) (Figures 2-4; page 3, lines 27-34).

Claim 37 depends from claim 30 and is directed to said rear edge of said plate (9) has an upwardly projecting cross piece (21) (page 4, lines 23-28),

said back end of said lower retaining rail (12) has a cross-member (22) with a generally L-shaped cross-section, said cross-member (22) engaging said rear edge of said plate (9) in a hook engaging manner (page 4, lines 28-34; page 5, lines 19-34), and

said back end of said upper retaining rail (11) includes a hook-shaped portion (28) that engages in a hook engaging manner behind said upwardly projecting cross piece (21) of said rear edge of said plate (9) (page 5, lines 19-34).

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- a. Whether claims 30-37 are indefinite under 35 U.S.C. § 112, second paragraph.
- b. Whether claims 15, 18, 22, 24, 25, 27, and 29-32 are anticipated under 35 U.S.C. §102 (b) by the Whalen reference (US Patent No. 2,103,885).
- c. Whether claims 30, 32, 34, and 35 are anticipated under 35 U.S.C. §102 (b) by the Verchere reference (US Patent No. 5,036,990).
- d. Whether claim 26 is unpatentable under 35 U.S.C. §103(a) over the Whalen reference in view of the Avery reference (US Patent No. 2,018,002).
- e. Whether claims 15, 18, 19, 22-25, 27, and 29 are unpatentable under 35 U.S.C. §103(a) over the Hearst reference (US Patent No. 2,450,337) in view of the Frank reference (US Patent No. 5,348,207).
- f. Whether claim 33 is unpatentable under 35 U.S.C. §103(a) over the Verchere reference in view of the Hearst reference.

(7) ARGUMENT

- a. Claims 30-37 are not indefinite under 35 U.S.C. § 112, second paragraph.

The Examiner rejects claims 30-37 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Appellants respectfully request reversal of this rejection.

Appellants note that the Advisory Action dated April 23, 2009, stated that the Amendment filed on April 13, 2009, has overcome the rejection under 35 U.S.C. § 112, second paragraph, involving the rail securement. However, the Advisory Action dated April 23, 2009, also stated that the Amendment filed on April 13, 2009, will not be entered. Therefore, the rejection of claims 30-37 under 35 U.S.C. § 112, second paragraph, is included in this Appeal Brief. The Examiner's Answer dated November 16, 2009, stated that the rejection concerning the rail securement is being considered moot.

Regarding claim 30, the final Office Action asserts that it is unclear whether or not the first and second supports are to be claimed in combination with the shelf base. The Office Action asserts that these features are first claimed in "for/intended use statements and then are later positively claimed ("in said extension and retraction directions of the first support and the second support").

Appellants note that an after-final Amendment was filed on April 13, 2009, which amended claim 30 to overcome this rejection under 35 U.S.C. § 112, second paragraph. The Advisory Action dated April 23, 2009, did not enter the amendments to claim 30 and stated that "the 112 second paragraph issue involving the supports has not been corrected via the proposed amendment."

As set forth in M.P.E.P. § 2111.02, if the body of a claim fully and intrinsically sets forth all of the limitations of the claimed invention, and the preamble merely states, for example, the purpose or intended use of the invention, rather than any distinct definition of any of the claimed invention's limitations, then the preamble is not considered a limitation and is of no significance to claim construction.

Appellants respectfully submit that the first support and the second support are not positively recited or required by claim 30. Claim 30 clearly defines the features of the shelf base. As explained in the present application and shown in Figures 2, 5, and 6, the shelf base can accommodate a variety of supports (e.g., 13, 15, 31, 36). However, as shown in Figures 1, 3, and 4, the supports (e.g., 13, 15, 31, 36) are not necessary to the shelf base, as claimed. Instead, the shelf base can be provided without the supports.

Appellants respectfully submit that the preamble of claim 30 merely recites that the features of the shelf base are for movable attachment thereto of a first support and a second

support of a refrigerator each of which is capable of supporting chilled goods. The shelf base is for movable attachment thereto of the first support and the second support of the refrigerator such that the first and second supports of the refrigerator can each move in extension and retraction directions with respect to the shelf base.

For at least the foregoing reasons, claim 30 is not indefinite under 35 U.S.C. § 112, second paragraph.

Additionally, the Office Action alleges that the rails are both secured and not secured along the same edges.

Contrary to the assertion in the final Office Action, Appellants respectfully submit that claim 30 does not recite that the rails are both secured and not secured along the same edges. Instead, claim 30 recites, inter alia:

upper retaining rails having a front end and a back end,
[...]
*said front end of said upper retaining rails and said front
end of said lower retaining rails being secured to one another
across at least one of said front edge of said plate and said rear
edge of said plate [...], and*
*said upper retaining rails and said lower retaining rails are
not secured to one another along said extents thereof between said
front edge of said plate and said rear edge of said plate.*

Claim 30 clearly and particularly recites the features of the upper and lower retaining rails. Therefore, claim 30 is clear and definite.

As explained above, the Advisory Action dated April 23, 2009, stated that the Amendment filed on April 13, 2009, has overcome the rejection under 35 U.S.C. § 112, second paragraph, involving the rail securement, and the Examiner's Answer dated November 16, 2009, stated that the rejection concerning the rail securement is being considered moot.

For at least the foregoing reasons, claims 30-37 are not indefinite under 35 U.S.C. § 112, second paragraph.

Appellants respectfully request reversal of this rejection.

- b. Claims 15, 18, 22, 24, 25, 27, and 29-32 are not anticipated under 35 U.S.C. §102 (b) by the Whalen reference (US Patent No. 2,103,885).

The Examiner rejects claims 15, 18, 22, 24, 25, 27, and 29-32 under 35 U.S.C. §102(b) as allegedly being anticipated by the Whalen reference.

Appellants respectfully request reversal of this rejection.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. [...] The identical invention must be shown in as complete detail as is contained in the ... claim." M.P.E.P. § 2131.

Independent Claim 15

Appellants respectfully submit that the Whalen reference does not disclose the features of the claimed invention including a shelf base having a plate, lower retaining rails extending along a lower side of the plate for attachment for a support for holding chilled goods, and upper retaining rails for another support extend along the upper side of the plate, as recited by independent claim 15. As explained above, these features are important for providing a support for chilled goods to be attached to the upper side of the shelf plate, as well as the lower side of the shelf plate, thereby improving the diversity of possibilities for utilizing the space of such a shelf base.

The Whalen reference very clearly does not disclose these features. Indeed, the Whalen reference very clearly fails to disclose at least a plate, as recited in claim 15. Instead, the Whalen reference discloses a shelf 9 having an open cross bar or rod construction, not a plate.

The Office Action alleges that the member 26 of the Whalen reference is considered to be a plate. However, contrary to the assertions in the Office Action, the Whalen reference very clearly discloses that the member 26 is a cross bar, not a plate.

Whalen very clearly does not disclose a shelf base having a plate, as recited by independent claim 15.

The Examiner's Answer and the Examiner's Response to Arguments

The Examiner's Answer dated November 16, 2009, provides a further explanation regarding the grounds of rejection along with a Response to Appellants' Arguments.

The Examiner's Answer notes that the plate is considered member 26 and the rails are the rail members 17-21 and 29-32. The Examiner's Answer asserts that the plate 26 has a front edge, a rear edge, a lower side, and an upper side, citing Figure 3.

The Examiner's Answer also asserts that the limitations found in intended use/"for" statements have been given no weight in the claims, and therefore, the supports allegedly are not being positively claimed. Furthermore, the Examiner's Answer asserts that, at page 9, paragraph 4 of the brief filed 9/16/2009, the applicant concurs with this claim limitation interpretation.

Appellants respectfully traverse this rejection.

M.P.E.P. § 2111 states that during patent examination, the pending claims must be "given their broadest *reasonable* interpretation *consistent with the specification*." The Patent and Trademark Office ("PTO") determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction "in light of the specification as it would be interpreted by one of ordinary skill in the art." [...] Indeed, the rules of the PTO require that application claims must "conform to the invention as set forth in the remainder of the specification and the terms and *phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description*." [...] The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach. Emphasis added Appellants.

Contrary to the assertions in the Examiner's Answer, the Whalen reference very clearly discloses that the member 26 is a cross bar or cross piece connecting the side rails 16 and 19 across their ends and at the middle part of their length, not a "plate" of the shelf base according to the invention as it would be interpreted by one of ordinary skill in the art in light of the specification.

Independent claim 15 recites a shelf base having a plate, lower retaining rails extending along a lower side of the plate for attachment for a support for holding chilled goods, and upper retaining rails for another support extend along the upper side of the plate.

The specification consistently describes the plate as the flat surface of the shelf upon which items in the refrigerator. See also Figures 1-4. Particularly, the specification describes the plate as a glass plate 9 enclosed by a plastic frame 8 and supported by supporting ribs arranged on the side walls of the cooling zone 1. The retaining rails 11, 12 extend above and below the glass plate 9 towards the rear wall of the cooling zone 1. The retaining rails 11, 12 are separated by the glass plate 9. See, e.g., page 3, lines 25-34.

Turning to the language of the claim, independent claim 15 recites a shelf base having a plate, lower retaining rails extending along a lower side of the plate for attachment for a support for holding chilled goods, and upper retaining rails for another support extend along the upper side of the plate.

As explained above, the Examiner's Answer asserts that, at page 9, paragraph 4 of the brief filed 9/16/2009, the applicant concurs with the interpretation that the limitations found in intended use/"for" statements have been given no weight in the claims, and therefore, the supports are not being positively claimed. Appellants respectfully submit that the functional language of the claims is relevant for reasonably interpreting the meaning of the claim terms in the context of the claim and in light of the specification. Hence, this language reasonably should be considered when interpreting the meaning of the claim terms.

One of ordinary skill in the art would not reasonably interpret a cross bar or cross piece connecting the side rails 16 and 19 across their ends and at the middle part of their length to be a plate as recited in claim 15, when the term plate is reasonably interpreted in the context of the surrounding text of the claim and in light of the specification. Appellants

respectfully submit that broadly interpreting the cross bar to be a “plate”, even assuming in arguendo that the cross bar has a flat upper surface and a flat lower surface, fails to reasonably consider the context of the term “plate” in the claim or the term “plate” as used in the specification as would be understood by one of ordinary skill in the art.

Moreover, Appellants respectfully submit that the lower retaining rails 16, 19 do not extend along a lower side of the alleged plate 26 for attachment for a support for holding chilled goods, and the upper retaining rails 16, 19 do not extend *along* the upper side of the alleged plate 26 for another support. The term “along” generally is defined as “in a line matching *the length* or direction of” by Merriam-Webster Online Dictionary, Retrieved January 6, 2010, from <http://www.merriam-webster.com/dictionary/along>.

Instead, the lower retaining rails 16, 19 extend across a lower side of the alleged plate 26 in a direction along a *width* of the alleged plate 26, and the upper retaining rails 16, 19 extend across the upper side of the alleged plate 26 in a direction along a *width* of the alleged plate 26.

Hence, Whalen very clearly does not disclose a shelf base having a plate, as recited by independent claim 15.

Independent Claim 30

Appellants respectfully submit that the Whalen reference does not disclose the features of the claimed invention including at least a plate having a front edge, a rear edge, a lower side, and an upper side, as recited by independent claim 30.

Additionally, the Whalen reference does not disclose the features of the claimed invention including at least that the upper retaining rails and the lower retaining rails are not secured to one another along extents thereof between the front edge of the plate and the rear edge of the plate, as recited in claim 30. As explained above, these features are important for providing a support for chilled goods to be attached to the upper side of the shelf plate, as well as the lower side of the shelf plate, thereby improving the diversity of possibilities for utilizing the space of such a shelf base.

The Whalen reference very clearly does not disclose these features. Indeed, the Whalen reference very clearly fails to disclose at least a shelf base including a plate having a front edge, a rear edge, a lower side, and an upper side, as recited in claim 30.

As explained above, the Office Action alleges that the member 26 of the Whalen reference is considered to be a plate. However, contrary to the assertions in the Office Action, the Whalen reference very clearly discloses that the member 26 is a cross bar, not a plate. Whalen very clearly does not disclose a shelf base having a plate having a front edge, a rear edge, a lower side, and an upper side, as recited in claim 30.

Moreover, the Whalen reference very clearly fails to disclose at least that the upper retaining rails and the lower retaining rails are not secured to one another along extents thereof between the front edge of the plate and the rear edge of the plate, as recited in claim 30. Instead, the Whalen reference very clearly discloses that it's upper and lower retaining rails are connected to one another mid-way along the extent.

For at least the foregoing reasons, claims 15, 18, 22, 24, 25, 27, and 29-32 are not anticipated under 35 U.S.C. §102 (b) by the Whalen reference.

The Examiner's Answer and the Examiner's Response to Arguments

As explained above, the Examiner's Answer notes that the plate is considered member 26 and the rails are the rail members 17-21 and 29-32. The Examiner's Answer asserts that the plate 26 has a front edge, a rear edge, a lower side, and an upper side, citing Figure 3. The Examiner's Answer asserts that for claim 30, the front portion/extents of the lower and upper rails of Whalen do extend along lower and upper sides of the plate, the front ends of the rails are secured to each other via the plate and a member (43), and the extents of the rails are not directly secured to one another between the front and rear edges of the plate as shown in Fig. 3. The Examiner's Answer asserts that rails and plates do not have to be the same length/depth as implied by the arguments, they only have to have a portion extend there along. Furthermore, the Examiner's Answer asserts that the terms front and rear are relative, therefore the end portions of rails 17-21 and 29-32 adjacent the plate 26 can be considered (sic) the rear ends (for claim 29) and the front ends, the ends remote from the plate and not attached thereto (for claim 30).

As explained above, the term “along” generally is defined as “in a line matching *the length* or direction of” by Merriam-Webster Online Dictionary, Retrieved January 6, 2010, from <http://www.merriam-webster.com/dictionary/along>. Appellants respectfully submit that the lower retaining rails 16, 19 do not extend along a lower side of the alleged plate 26 for attachment for a support for holding chilled goods, and the upper retaining rails 16, 19 do not extend *along* the upper side of the alleged plate 26 for another support. Instead, the lower retaining rails 16, 19 extend across a lower side of the alleged plate 26 in a direction along a *width* of the alleged plate 26, and the upper retaining rails 16, 19 extend across the upper side of the alleged plate 26 in a direction along a *width* of the alleged plate 26.

Moreover, contrary to the assertions that the terms “front” and “rear” simply are relative terms, claim 30 clearly defines the relationship between the front edge and rear edge of the plate and the front and rear ends of the lower and upper retaining rails.

For example, claim 30 recites a shelf base comprising:

a plate having a front edge, a rear edge, a lower side, and an upper side;
lower retaining rails having a front end and a back end, said lower retaining rails extending at least between said front edge of said plate and said rear edge of said plate along said lower side of said plate and said lower retaining rails [...]; and
upper retaining rails having a front end and a back end, said upper retaining rails extending at least between said front edge of said plate and said rear edge of said plate along said upper side of said plate and said upper retaining rails [...],
said front end of said upper retaining rails and said front end of said lower retaining rails being secured to one another across at least one of said front edge of said plate and said rear edge of said plate [...], and
said upper retaining rails and said lower retaining rails are not secured to one another along said extents thereof between said front edge of said plate and said rear edge of said plate. Emphasis added.

As clearly shown in Figure 3 of the Whalen reference, the rails 16, 19 do not extend along the length of the alleged plate 26. Rather, the rails 16, 19 extend across only a portion of the width of the alleged plate 26.

Hence, in either event, the Whalen reference clearly fails to disclose at least said lower retaining rails extending at least between said front edge of said plate and said rear edge of said plate along said lower side of said plate and said lower retaining rails [...]; and said upper retaining rails extending at least between said front edge of said plate and said rear edge of said plate along said upper side of said plate and said upper retaining rails [...], as recited in claim 30.

Appellants respectfully request reversal of this rejection.

- c. Claims 30, 32, 34, and 35 are not anticipated under 35 U.S.C. §102 (b) by the Verchere reference (US Patent No. 5,036,990).

The Examiner rejects claims 30, 32, 34, and 35 under 35 U.S.C. §102 (b) as allegedly being anticipated by the Verchere reference.

Appellants respectfully request reversal of this rejection.

As set forth above, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. [...] The identical invention must be shown in as complete detail as is contained in the ... claim." M.P.E.P. § 2131.

Appellants respectfully submit that the Verchere reference does not disclose the features of the claimed invention including at least that said upper retaining rails for attachment of the second support that holds chilled goods such that the second support can be extended relative to said upper retaining rails from an inward location into an outward location and can be retracted relative to said upper retaining rails from said outward location into said inward location, as recited in claim 30.

Additionally, the Verchere reference does not disclose at least said front end of said upper retaining rails and said front end of said lower retaining rails being secured to one another across at least one of said front edge of said plate and said rear edge of said plate such that said upper retaining rails and said lower retaining rails are secured against

movement relative to said plate in said extension and retraction directions of the first support and the second support with respect to said shelf base, as recited in claim 30.

The Verchere reference very clearly does not disclose these features. Instead, the Verchere reference merely discloses suspending one or more trays 1 from the lower retaining rails 28, 33, not the upper retaining rails 27, 32. The Verchere reference does not disclose attachment of a support to the upper retaining rails 27, 32.

Assuming in *arguendo* that a support could be attached to the upper retaining rails 27, 32, the structure of the hooks 3 and 4 of the Verchere reference very clearly would prohibit the second support from being extended relative to the upper retaining rails from an inward location into an outward location and from being retracted relative to the upper retaining rails from the outward location into the inward location, as recited in claim 30.

The Verchere reference also does not disclose at least said front end of said upper retaining rails and said front end of said lower retaining rails being secured to one another across at least one of said front edge of said plate and said rear edge of said plate such that said upper retaining rails and said lower retaining rails are secured against movement relative to said plate in said extension and retraction directions of the first support and the second support with respect to said shelf base, as recited in claim 30. Indeed, the Office Action does not cite any support for these features in the Verchere reference. The Verchere reference is silent with respect to securing the alleged upper and lower retaining rails 3, 4 against movement relative to the alleged plate 40 in the extension and retraction directions, as recited in claim 30.

For at least the foregoing reasons, claims 30, 32, 34, and 35 are not anticipated under 35 U.S.C. §102 (b) by the Verchere reference.

Appellants respectfully request reversal of this rejection.

- d. Claim 26 is patentable under 35 U.S.C. §103(a) over the Whalen reference in view of the Avery reference (US Patent No. 2,018,002).

The Examiner rejects claim 26 under 35 U.S.C. §103(a) as allegedly being unpatentable over the Whalen reference in view of the Avery reference.

Appellants respectfully request reversal of this rejection.

Appellants respectfully submit that the Avery reference does not remedy the deficiencies of the Whalen reference, as explained above.

Instead, the Avery reference merely discloses a support that includes a base plate with ribs, having indentations.

Thus, the Avery reference does not remedy the deficiencies of the Whalen reference.

Claim 26 is patentable under 35 U.S.C. §103(a) over the Whalen reference in view of the Avery reference.

Appellants respectfully request reversal of this rejection.

- e. Claims 15, 18, 19, 22-25, 27, and 29 are patentable under 35 U.S.C. §103(a) over the Hearst reference (US Patent No. 2,450,337) in view of the Frank reference (US Patent No. 5,348,207).

The Examiner rejects claim 15, 18, 19, 22-25, 27, and 29 under 35 U.S.C. §103(a) as allegedly being unpatentable over the Hearst reference in view of the Frank reference.

Appellants respectfully request reversal of this rejection.

The Hearst reference merely discloses a shelf base and upper and lower tiltable drawers.

The Frank reference discloses a drawer-containing vehicle top carrier apparatus 10 that is mounted on the roof 11 of a vehicle 12. Appellants respectfully submit, however, that the Examiner may not rely upon the Frank reference under 35 U.S.C. § 103 because the Frank reference is non-analogous art.

To qualify as analogous art, a reference must either be (1) within the field of Applicants endeavor, or if not, (2) the subject matter logically would have commended itself to an inventor's attention in considering his or her invention as a whole. See M.P.E.P. § 2141.01(a)(I) citing *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1397 (2007).

In the present instance, the Frank reference clearly is not within the field of Appellants' endeavor.

The field of Appellants' endeavor is the field of home appliances and, more particularly, refrigerators. In stark contrast, the Frank reference is within the completely different and unrelated field of vehicle rooftop carrier apparatus for a motor vehicle.

The field of endeavor of vehicle rooftop carrier apparatus for motor vehicles clearly is different from the field of endeavor of household appliances such as refrigerators.

For at least the foregoing reasons, the Frank reference clearly is not within the field of Appellants' endeavor.

As set forth above, a reference that is not within the field of Applicants endeavor may qualify as analogous art if the subject matter logically would have commended itself to an inventor's attention in considering his or her invention as a whole. See M.P.E.P. § 2141.01(a)(I) citing *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1397 (2007).

In the present instance, the subject matter of the Frank reference logically would *not* have commended itself to an inventor's attention in considering his or her invention as a whole.

Indeed, the subject matter of a vehicle rooftop carrier apparatus for a motor vehicle according to the Frank reference logically would *not* have commended itself to an inventor's attention in considering, as a whole, ways to improve the diversity of possibilities for utilizing the space of a shelf base for a household appliance, such as a refrigerator. The Frank reference has absolutely nothing to do with solving the problem of improving the diversity of possibilities for utilizing the space of a shelf base for a household appliance, as in the present invention as a whole.

For at least these reasons, the subject matter of the Frank reference logically would *not* have commended itself to an inventor's attention in considering his or her invention as a whole, and therefore, the Frank reference does not qualify as analogous art.

Thus, claims 15, 18, 19, 22-25, 27, and 29 are patentable under 35 U.S.C. §103(a) over the Hearst reference in view of the Frank reference.

Appellants respectfully request reversal of this rejection.

- f. Claim 33 is patentable under 35 U.S.C. §103(a) over the Verchere reference in view of the Hearst reference.

The Examiner rejects claim 33 under 35 U.S.C. §103(a) as allegedly being unpatentable over the Verchere reference in view of the Hearst reference.

Appellants respectfully traverse this rejection.

Appellants respectfully submit that the Hearst reference does not remedy the deficiencies of the Verchere reference, as explained above.

Instead, the Hearst reference merely discloses a shelf base and upper and lower tiltable drawers.

Thus, the Hearst reference does not remedy the deficiencies of the Verchere reference.

Claim 33 is patentable under 35 U.S.C. §103(a) over the Verchere reference in view of the Hearst reference.

Appellants respectfully request reversal of this rejection.

(8) CONCLUSION

In view of the foregoing discussion, Appellants respectfully request reversal of the Examiner's rejections.

Respectfully submitted,

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CLAIMS APPENDIX

1 - 14 (Canceled)

15. (Rejected) A shelf base for a refrigerator;
comprising a plate;
lower retaining rails extending along a lower side of the plate for attachment for a
support for holding chilled goods; and
upper retaining rails for another support extend along the upper side of the plate.

16-17. (Canceled)

18. (Rejected) The shelf base according to claim 15, including said upper retaining rails
are connected at least at one of their ends to respectively one end of one of said
lower retaining rails.

19. (Rejected) The shelf base according to claim 15, including front ends of respectively
one of said upper and one of said lower retaining rails are connected by a guide
profile which spans the front edge of said plate and is displaceable along said front
edge.

20. (Allowable)

21. (Canceled)

22. (Rejected) The shelf base according to claim 18, including at least one of said lower
and said upper retaining rails are open at their rear ends.

23. (Rejected) The shelf base according to claim 29 including an upwardly projecting projection formed at the front end of a bearing surface of at least one of said lower rails.
24. (Rejected) The shelf base according to claim 18, including one of a shell or a bottle holder is mounted in said lower retaining rails as a support.
25. (Rejected) The shelf base to claim 18, including a support for drinks cans mounted in said upper retaining rails.
26. (Rejected) The shelf base according to claim 25, including said support for drinks cans includes a base plate substantially parallel to said plate and includes ribs provided with indentations projecting from said base plate.
27. (Rejected) The shelf base according to claim 15, including an egg holder mounted in one of said upper or lower retaining rails.
28. (Allowable)
29. (Rejected) The shelf base according to claim 18, including rear ends of respectively one of said upper and one of said lower retaining rails span the rear edge of said plate and are displaceably connected along said rear edge.
30. (Rejected) A shelf base for movable attachment thereto of a first support and a second support of a refrigerator each of which is capable of supporting chilled goods, the shelf base for movable attachment thereto of the first support and the second support of the refrigerator such that the first and second supports of the refrigerator can each move in extension and retraction directions, said shelf base comprising:

a plate having a front edge, a rear edge, a lower side, and an upper side;

lower retaining rails having a front end and a back end, said lower retaining rails extending at least between said front edge of said plate and said rear edge of said plate along said lower side of said plate and said lower retaining rails for movable attachment thereto of the first support that holds chilled goods such that the first support can be extended relative to said lower retaining rails from an inward location into an outward location and can be retracted relative to said lower retaining rails from said outward location into said inward location; and

upper retaining rails having a front end and a back end, said upper retaining rails extending at least between said front edge of said plate and said rear edge of said plate along said upper side of said plate and said upper retaining rails for attachment of the second support that holds chilled goods such that the second support can be extended relative to said upper retaining rails from an inward location into an outward location and can be retracted relative to said upper retaining rails from said outward location into said inward location, said front end of said upper retaining rails and said front end of said lower retaining rails being secured to one another across at least one of said front edge of said plate and said rear edge of said plate such that said upper retaining rails and said lower retaining rails are secured against movement relative to said plate in said extension and retraction directions of the first support and the second support, and said upper retaining rails and said lower retaining rails are not secured to one another along said extents thereof between said front edge of said plate and said rear edge of said plate.

31. (Rejected) The shelf base according to claim 30, including said upper retaining rails and said lower retaining rails are secured to one another so as to be movable in a direction perpendicular to said extension and retraction directions of said first support and said second support.

32. (Rejected) The shelf base according to claim 30, including said plate has a solid extent with no apertures at least in said portion thereof along which said upper retaining rails and said lower retaining rails extend.
33. (Rejected) The shelf base according to claim 32, including said plate is formed of glass.
34. (Rejected) The shelf base according to claim 30, including said back end of said upper retaining rails and said back end of said lower retaining rails are secured to one another across said rear edge of said plate.
35. (Rejected) The shelf base according to claim 30, including the front ends of said upper and lower retaining rails are connected by a guide profile that spans the front edge of said plate and is displaceable along the front edge of the plate.
36. (Allowable - Rejected under 35 USC 112) The shelf base according to claim 30, including the back end of respectively one of said upper and one of said lower retaining rails spans said rear edge of said plate and said back end of said upper retaining rail is displaceably connected to said back end of said lower retaining rails.
37. (Allowable - Rejected under 35 USC 112) The shelf base according to claim 30, including said rear edge of said plate has an upwardly projecting cross piece, said back end of said lower retaining rail has a cross-member with a generally L-shaped cross-section, said cross-member engaging said rear edge of said plate in a hook engaging manner, and said back end of said upper retaining rail includes a hook-shaped portion that engages in a hook engaging manner behind said upwardly projecting cross piece of said rear edge of said plate.

EVIDENCE APPENDIX

None

ATTORNEY DOCKET NO.: 2003P01225WOUS

RELATED APPEALS APPENDIX

None